

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

JOHN WILLIAM HETZEL

PLAINTIFF

v.

Civil No. 06-5024

DR. MULLINS; and
NURSE McDONALD

DEFENDANTS

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

The plaintiff filed this civil rights action pursuant to 42 U.S.C. § 1983. He proceeds *pro se* and *in forma pauperis*.

Hetzel is currently incarcerated at the Arkansas Department of Correction. Hetzel contends his constitutional rights were violated while he was incarcerated in the Benton County Detention Center. Specifically, he contends he was denied adequate medical care.

On September 20, 2007, defendants' motion for summary judgment was denied (Doc. 22). On September 24, 2007, the case was scheduled for an evidentiary hearing on February 5, 2008 (Doc. 23). A writ of habeas corpus ad testificandum was issued to ensure Hetzel was transported to the hearing (Doc. 25).

Hetzel has now filed a motion to dismiss the case (Doc. 26). In his motion, Hetzel indicates he does not have the evidence to go forward with the case. He also indicates he has lost touch with the witnesses. He therefore asks that the case be dismissed. He requests that the warden be advised that Hetzel does not need to be produced for the hearing.

I recommend that Hetzel's motion to dismiss (Doc. 26) be granted and this case be dismissed with prejudice.

The parties have ten days from receipt of the report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 8th day of November 2007.

/s/ *J. Marschewski*
HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE